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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,438	11/21/2003	Jean Paul Craze	10022	2964
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MICHAEL P. MAZZA, LLC 686 CRESCENT BLVD. GLEN ELYN, IL 60137			EXAMINER GREENHUT, CHARLES N	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/719,438	Applicant(s) CRAZE, JEAN PAUL	
	Examiner Charles N. Greenhut	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application. *13-26*
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-26 is/are rejected. *no*
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

I. Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/26/07 has been entered.

II. Claim Rejections - 35 USC § 112

The following is a quotation from the relevant paragraphs of 35 U.S.C. 112:

(2) The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-10 and 13-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1.1. The term "rapid" in claim 1, 19 and 22 is a relative term which renders the claim indefinite. The term "rapid" is a term that is based upon the opinion of the end user and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

1.2. The term "quickly" in claim 25 is a relative term which renders the claim indefinite. The term "quick" is a term that is based upon the opinion of the end user and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

1.3. The phrase “facilitating rapid connection and decoupling” in claim 1 and 19 depends upon the skill level of the end user and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

1.4. The phrase “capable of being quickly decoupled” in claim 25 depends upon the skill level of the end user and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

III. Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

I. Claim(s) 1-5, 8-10, 13, 15-18, and 25-26 is/are rejected under 35 U.S.C. 102(b) as being anticipated by NOLASCO (US 6,139,250 A).

1.1. With respect to claim 1, and 25-26 NOLASCO discloses a transverse cross bar (12d), connected to a boom (11), two receivers (16)/(17) having engagement mechanism (e.g., a bore) facilitating rapid connection and decoupling from the cross bar (12d), connected to opposing ends of the cross bar (12d), wheel support member (20)/(21) having an elongated arm (20a)/(21a), and a wheel retainer (22)/(23), and powering mechanisms driving horizontal movement (27)/(28) each connected to wheel supports (20/21), at a plate (pin accepting protrusion no numeral - Fig. 5), capable of being quickly decoupled (via pin) from the power mechanisms (27/28).

1.2. With respect to claims 2-5, NOLASCO additionally discloses the apparatus is a self-loading wheel lift, and may be rapidly disassembled to permit conversion to an alternate towing apparatus such as a tow bar with a fork.

1.3. With respect to claims 8-10 NOLASCO additionally discloses one or more mechanisms facilitating rapid connection and decoupling (e.g., bolt, pin and receiver), hydraulic cylinders (27)/(28) communicating with rods having apertures removably attached to receivers, and a removable locking pin (shown not labeled Fig. 3).

1.4. With respect to claims 13, 15-18, NOLASCO additionally discloses the wheel support members comprising an L-arm (20/21) pivotally attached to receivers (at 24/25) by parallel plates (18)/(19), the boom extensible and retractable, hydraulic power and movable ends (16)/(17).

IV. Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claim(s) 6-7 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over NOLASCO (US 6,139,250 A) in view of KIEFER (US 5,575,606 A).

1.1. With respect to claims 6-7, NOLASCO does not elaborate on the coupling mechanisms. The cam lock including a rotatable handle and spring loaded plunger pin that applicant uses for rapid connection and disconnection is well known and commonly used in the art to facilitate rapid connection and disconnection of

components as illustrated by KIEFER (Figs. 5A-B). It would have been obvious to one of ordinary skill in the art to modify NOLASCO with the mechanism of KIEFER in order to facilitate connection and disconnection.

2. Claim(s) 14 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over NOLASCO (US 6,139,250 A).

2.1. With respect to claim 14, NOLASCO is silent as to what holds the pivot pin in place.

Retaining screws are well known and commonly used in the art to hold things in place. It would have been obvious to one of ordinary skill in the art to use a retaining screw in order to hold the pivot pin of NOLASCO in place.

3. Claim(s) 19-24 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over NOLASCO (US 6,139,250 A) in view of PETERSON (US 4,384,817 A).

3.1. With respect to claim 19-24, NOLASCO discloses a transverse cross bar (12d), connected to a boom (11), two receivers (16)/(17) connected to opposing ends of the cross bar (12d), wheel support member (20)/(21) having an elongated arm (20a)/(21a), and a wheel retainer (22)/(23), and powering mechanisms driving horizontal movement (27)/(28). NOLASCO fails to teach rapidly disassembling the wheel lift and replacing it with an alternate towing apparatus. PETERSON teaches rapidly disassembling the wheel lift and replacing it with an alternate towing apparatus (Figs. 9-10). It would have been obvious to one of ordinary skill in the art to modify NOLASCO with the detach and replace step of PETERSON in order to accommodate vehicles requiring a sling for towing and vehicles requiring handling by engaging an opposed pair of wheels. NOLASCO additionally discloses hydraulic

cylinders (27)/(28) communicating with rods having apertures removably attached to receivers, and a self loading wheel lift. NOLASCO additionally discloses in discussion of prior art that fork attachments are known in the art (Col. 2 Li. 57). It would have been obvious to one of ordinary skill in the art to use a frame fork attachment in order to lift a vehicle by its frame.

V. Response to Applicant's Arguments

Applicant's arguments and affidavits entered 11/26/07 have been fully considered.

1. Applicant has overcome objections to the IDS, specification and drawings previously set forth.
2. Applicant argues that use of the term, "rapid" in claims 1, 19 and 22 does not render the claims indefinite under 35 USC 112 2nd paragraph. This argument is not persuasive. Firstly, with regard to the first declaration, the fact that the term is elaborated on by declaration does not change the fact that the term is one of degree and capable of infinite interpretations and is therefore indefinite. Applicant additionally argues that the terms "quickly" and "rapidly" are definite because the terms are essentially analogous to terms like "about", "substantially", and "period sufficient" which are terms of degree that have been held, in certain circumstances to be definite. This argument is also not persuasive. The Examiner agrees that the fact that a claim contains a term of degree, does not in and of itself render the claim indefinite so long as one of ordinary skill in the art would understand what is claimed. In this instance, however, the term "rapid," a term upon which Applicant relies upon to argue the claims are patentably distinct from the prior art, depends on the unrestrained, subjective opinion of the person interpreting the claim language or practicing the invention. I.e., what is rapidly to one, may not be to another. One of ordinary skill in the art would recognize this

term is relative and subjective. This is evidenced by Applicant's own declaration of 1/12/07 where the process for disassembling NOLOASCO is described as "*relatively* slow" (*Emphasis supplied*). Consider, for example, the scenario presented in Applicant's declaration of 10/29/07, that it takes approximately one minute to disassemble Applicant's device while it takes twenty-two minutes to disassemble the prior art device. Firstly, to some individuals of ordinary skill in the art twenty-two minutes could fall within Applicant's own definition of a "within...a few" minutes and properly be considered "rapid." In other words, Applicant's own definition for the term does not necessarily exclude twenty-two minutes. Secondly, even assuming twenty-two minutes would not be considered "within...a few" minutes to anyone having ordinary skill in the art, other individuals may be able to disassemble the prior art device in less time falling within the (unstated) range of time periods that Applicant considers "within... a few" minutes. Thus whether the prior art meets the claim limitation would be based upon the abilities of the end user and would therefore differ from user to user. Use of such a limitation in a patent claim would not reasonably apprise one of ordinary skill in the art of the scope of the invention. Additionally, consider a reverse example; A potential infringer copies every structural detail of Applicant's device. That potential infringer then conducts its own tests, with its own end users, who may not possess the same abilities as Mr. Craze, and concludes that it takes about five minutes to decouple their identical device. Since that time may be regarded as outside "within...a few" (e.g., less than 4) minutes as the term is used by Mr. Craze, the potential infringer would be capable of arguing non-infringement despite making an identical device. The claim scope is uncertain because, firstly, it is based upon the opinion of the reader, and secondly, because it is

dependant upon the abilities of the end user. This type of uncertainty is what 35 USC 112 2nd paragraph is aimed at avoiding.

3. It is unclear how the PETERSON reference relates to any of the rejections issued under 35 USC 102 as stated by Applicant on pages 10-11.

4. It is unclear exactly what claims and rejections are relevant to Applicant's discussion of NOLASCO on pages 11-12. The Examiner recognizes and appreciates the differences between the prior art and the invention disclosed in Applicant's preferred embodiment. Applicant is respectfully reminded, however, that unless those differences are structurally recited within the claims, discussion of those differences does not aid in distinguishing the claimed invention from the prior art since although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. In order to define over the prior art, Applicant must specifically point out what structural features, in an apparatus claim, or what steps in a method claim are not disclosed, taught or suggested by the prior art. Applicant is again reminded, that terms such as "rapid," because of their lack of definite interpretation, do not aid in distinguishing a claim from the prior art.

5. Applicant argues that claim 6 is not rendered obvious by NOLASCO in view of KIEFER because combination of those references is the result of improper hindsight reasoning. This argument is not persuasive. It must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. In this case, KEIFER demonstrates

that use of the claimed cam lock for selectively engaging a first element within a second is known in the art. Implementation of that structure in order to serve essentially the same purpose on similar parts would not constitute improper hindsight reasoning.

6. Applicant argues claims 19-24 are not rendered obvious by NOLASCO in view of PETERSON because PETERSON fails to disclose any process for going from the apparatus shown in Fig. 9 to that of Fig. 10. This argument is not persuasive. Discussion of this process can be found at (Col. 19 Li. 53 et seq.).
7. Applicant alleges unauthorized copying of his invention as secondary evidence of non-obviousness. Applicant, however, has failed to indicate specifically what claimed element or combination of element is non-obvious because of this unauthorized copying, as is required to make this determination. Applicant is also reminded that more than the mere fact of copying is necessary to make that action significant because copying may be attributable to other factors such as a lack of concern for patent property or contempt for the patentees ability to enforce the patent. MPEP 716.06.

VI. Conclusion

1. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles N. Greenhut whose telephone number is (571) 272-1517. The examiner can normally be reached on 7:30am - 4:00pm EST.

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3. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached at (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.
4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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